



This document is scheduled to be published in the Federal Register on 04/20/2012 and available online at <http://federalregister.gov/a/2012-09505>, and on FDsys.gov

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-565]

CERTAIN INK CARTRIDGES AND COMPONENTS THEREOF MODIFICATION OF REMEDIAL ORDERS AND TERMINATION OF CONSOLIDATED ADVISORY OPINION AND MODIFICATION PROCEEDINGS

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has modified the general exclusion order and a cease and desist order to cover components of ink cartridges and terminated the above-captioned consolidated advisory opinion and modification proceedings.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-3041. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov/>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying

investigation in this matter on March 23, 2006, based on a complaint filed by Epson Portland, Inc. of Oregon; Epson America, Inc. of California; and Seiko Epson Corporation of Japan (collectively “Epson”). 71 *Fed. Reg.* 14720 (March 23, 2006). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (“section 337”) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of claim 7 of U.S. Patent No. 5,615,957; claims 18, 81, 93, 149, 164 and 165 of U.S. Patent No. 5,622,439; claims 83 and 84 of U.S. Patent No. 5,158,377; claims 19 and 20 of U.S. Patent No. 5,221,148; claims 29, 31, 34 and 38 of U.S. Patent No. 5,156,472; claim 1 of U.S. Patent No. 5,488,401; claims 1-3 and 9 of U.S. Patent No. 6,502,917; claims 1, 31 and 34 of U.S. Patent No. 6,550,902; claims 1, 10 and 14 of U.S. Patent No. 6,955,422; claim 1 of U.S. Patent No. 7,008,053; and claims 21, 45, 53 and 54 of U.S. Patent No. 7,011,397. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 24 companies located in China, Germany, Hong Kong, Korea, and the United States. Several respondents were terminated from the investigation on the basis of settlement agreements or consent orders or were found in default.

On March 30, 2007, the presiding administrative law judge (ALJ) issued a final ID in the investigation finding a violation of section 337 with respect to certain respondents. He found the asserted claims valid and infringed by certain respondents’ products. He recommended issuance of a general exclusion order, limited exclusion order, and cease and desist orders directed to certain respondents and bond in the amount of \$13.60 per cartridge during the Presidential review period.

On October 19, 2007, after review, the Commission made its final determination in the investigation, finding a violation of section 337. The Commission issued a general exclusion order, limited exclusion order, and cease and desist orders directed to several domestic respondents. The Commission also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d), (f), and (g) did not preclude issuance of the aforementioned remedial orders, and that the bond during the Presidential review period would be \$13.60 per cartridge for covered ink cartridges.

On December 13, 2010, two respondents in the underlying investigation, Ninestar Technology Co., Ltd. and Ninestar Technology Company, Ltd. (“Ninestar U.S.”) (collectively, “Ninestar”), filed a request with the Commission asking for institution of an advisory opinion proceeding and a petition for modification of the general exclusion order and a cease and desist order directed to Ninestar U.S. to indicate that certain design-around ink cartridges are not covered by the Commission’s orders. On February 3, 2011, Epson filed a petition for modification of the general exclusion order and the cease and a desist order issued to Ninestar U.S. to indicate that components of certain ink cartridges are covered by the orders. Epson asked that the requested proceedings be consolidated along with the advisory opinion proceeding requested by Ninestar and assigned to an administrative law judge (ALJ). On March 18, 2011, the Commission instituted the requested consolidated advisory opinion and modification proceedings.

On February 8, 2012, Epson and Ninestar filed a joint motion asking the Commission to terminate the advisory opinion and modification proceedings requested by Ninestar based upon a settlement agreement reached by Ninestar and Epson. On February 14, 2012, the ALJ issued an initial determination (ID) granting the joint motion. No petitions for review of the ID were filed.

On February 8, 2012, Epson filed a motion for summary determination with respect to Epson's petition for modification of the remedial orders. On February 13, 2012, Ninestar filed a non-opposition to Epson's motion. On February 21, 2012, the ALJ issued a Recommendation on Modification of the Remedial Orders. Based on undisputed facts and the arguments of Epson and Ninestar, the ALJ recommended modifying the general exclusion order and cease and desist order to include components of ink cartridges.

The Commission has determined to adopt the ALJ's recommendation and modify the general exclusion order and the cease and desist order issued to Ninestar U.S. to include components of ink cartridges, as well as ink cartridges. The consolidated advisory and modification proceedings are terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.76 and 210.79 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.76, 210.79).

By order of the Commission.

James R. Holbein

Secretary to the Commission

Issued: April 16, 2012